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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Bradford J. Forth et al.

Appln. No.: 09/723,564

Filed: November 28, 2000

For: INTRA-DEVICE COMMUNICATIONS
ARCHITECTURE FOR MANAGING
ELECTRICAL POWER DISTRIBUTION
AND CONSUMPTION

Examiner: P. Rodriguez

Art Unit: 2125

Attorney Docket No: 6270/48

Mail Stop Patent Ext.
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Request for Reconsideration of the Patent Term Adjustment.
☒ Return Receipt Postcard

Fee calculation:

- ☐ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
☒ A petition or processing fee in an amount of \$200.00 under 37 C.F.R. § 1.18(e).
☐ An additional filing fee has been calculated as shown below:

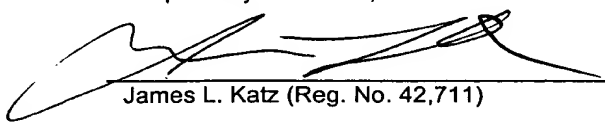
					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$25=			x \$50=	
Indep.		Minus			x \$100=			x \$200=	
First Presentation of Multiple Dep. Claim					+\$180=			+\$360=	
					Total	\$		Total	\$

Fee payment:

- ☒ A check in the amount of \$200.00 is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

Date 11/3/05


James L. Katz (Reg. No. 42,711)

REMARKS

Reconsideration of the patent term adjustment under 35 U.S.C. § 154(b) is requested. U.S. Patent No. 6,961,641 was issued with a term adjustment of 794 days. A copy of U.S. Patent No. 6,961,641 is included herewith as Exhibit A. Correction of the patent term adjustment to add 376 days, or in the alternative 148 days, to the patent term as shown below is respectfully requested. The petition fee under 37 C.F.R. § 1.18(e) is included herewith. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925. A duplicate copy of this Petition is attached.

The patent term adjustment for U.S. patent number 6,961,641 is calculated as shown below. Dates are specified based on the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Note that U.S. Patent No. 6,961,641 is based on an original patent application and is not subject to a terminal disclaimer.

Period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1)

The period of adjustment pursuant to 37 C.F.R. § 1.703(a)(1) is the number of days in the period beginning on the day (“the 14 month date”) after that date that is fourteen months after the date on which the application was filed pursuant to 35 U.S.C. § 111(a), or fulfilled the requirements pursuant to 35 U.S.C. § 371, and ending on the date of mailing of either an action pursuant to 35 U.S.C. § 132 or a notice of allowance pursuant to 35 U.S.C. § 151, whichever comes first.

The present application was filed on November 28, 2000. The 14 month date specified in 37 C.F.R. § 1.703(a) is January 28, 2002. The first PTO action was a restriction mailed September 9, 2003. The difference between the 14 month date and the date of mailing of the non-final rejection is 589 days.

Period of adjustment pursuant to 37 C.F.R. § 1.703(a)(6)

The period of adjustment pursuant to 37 C.F.R. § 1.703(a)(6) is the number of days in the period beginning on the day (“the 4 month date”) after that date that is four months after the date the

issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

In the present application, the issue fee was paid and all outstanding requirements were satisfied on August 9, 2004. The 4 month date is therefore December 9, 2004. The patent was issued on November 1, 2005. The difference between the 4 month date and the issue date of the patent is 327 days.

Period of adjustment under 37 C.F.R. § 1.703(b)

The period of adjustment under 37 C.F.R. § 1.703(b) is the number of days in the period beginning on the day ("the 3 year date") after the date that is three years after the date on which the application was filed under 35 U.S.C. § 111(a).

The present application was filed on November 28, 2000. The 3 year date specified in 37 C.F.R. § 1.703(b) is November 28, 2003. U.S. Patent Number 6,961,641 was issued on November 1, 2005. The difference between the 3 year date and the issue date is 703 days.

Reduction in period of adjustment under 37 C.F.R. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.703(f) is the sum of the periods calculated under 37 C.F.R. § 1.703(a) – (e), to the extent they are not overlapping.

The period of adjustment under 1.703(a)(1) is 589 days. The period of adjustment under 1.703(b) is 703 days. As the first office action was mailed prior to November 28, 2003, these two periods of adjustment do not overlap.

The period of adjustment under 1.703(a)(6) is 327 days. The period of adjustment under 1.703(b) is 703 days. These two periods of adjustment overlap between December 9, 2004 and November 1, 2005. The difference between these two periods of adjustment is 376 days and accordingly, they overlap by 327 days.

Reduction in period of adjustment under 37 C.F.R. § 1.704(b)

Pursuant to 37 C.F.R. § 1.704(b), the period of adjustment shall be reduced by the number of days, if any, beginning on the day after the date (the 3 month date) that is three months after the date of mailing or transmission of an Office communication notifying the applicant of a rejection, objection, etc., and ending on the date a corresponding reply was filed.

In the present application, non-final action was mailed on December 24, 2003 and a response was received on March 26, 2004. The difference between March 26, 2004 and the date that is 3 months after the date of mailing of the non-final action, March 24, 2004, is 2 days.

Pursuant to 37 C.F.R. § 1.704(c)(10), in the case of a submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: the number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on mailing date of the office action or notice in response to the amendment under § 1.312 or such other paper; or four months.

In the present application, the notice of allowance was mailed on July 13, 2004. A petition to correct inventorship pursuant to 37 CFR § 1.48 was filed on September 2, 2004. Notice from the PTO granting the petition was mailed on September 19, 2005. The difference between September 2, 2004 and September 19, 2005 is 382 days which is greater than 4 months (120 days), accordingly the reduction is 120 days.

Request for reconsideration of patent term adjustment indicated in the notice of allowance under 37 C.F.R. § 1.705(b)

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in 37 C.F.R. § 1.705(d), must be made by way of an application for patent term adjustment filed no later than the payment of the issue fee.

The present application was filed on November 28, 2000. The 3 year date specified in 37 C.F.R. § 1.703(b) is November 28, 2003. The notice of allowance for the present application was mailed on July 13, 2004. The difference between the 3 year date and the mailing date of the notice of allowance is 228 days.

The notice of allowance for the present application indicated a patent term adjustment of 587 days. Accordingly, as of the mailing date of the notice of allowance, the Applicant believed they were entitled to at least an additional 228 days under 37 C.F.R. § 1.703(b), as calculated above, given that the patent had not yet issued.

U.S. Patent No. 6,961,641 was issued on November 1, 2005. The difference between the mailing date of the notice of allowance, July 13, 2004, and the issue date is 476 days.

The Applicant did not file an application for reconsideration of the patent term adjustment prior to, or in conjunction with, payment of the issue fee. However, the Applicant submits that the proper adjustment due under 37 C.F.R. § 1.703(b) could not be known until the patent actually issued and that reconsideration of the period for adjustment under 37 C.F.R. § 1.703(b) is therefore covered by 37 C.F.R. § 1.705(d). Accordingly, the filing of an application for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b), prior to, or in conjunction with, payment of the issue fee was not required, and in fact, would have been premature.

Total patent term adjustment

For the present application, the total patent term adjustment under 37 C.F.R. § 1.703(f) is the period of adjustment under 37 C.F.R. § 1.703, to the extent that such periods were not overlapping, reduced by the reduction under 37 C.F.R. § 1.704. The total adjustment is thus 589 days pursuant to 1.703(a)(1) + 327 days pursuant to 1.703(a)(6) + 703 days pursuant to 1.703(b) – 327 days pursuant to 1.703(f) - 122 days of pursuant to 1.704(b) = 1170 days.


It is respectfully submitted that in the patent term adjustment determined for U.S. Patent No. 6,961,641, the term was not adjusted to include the non-overlapping portion of the 703 day term adjustment under 37 C.F.R. § 1.703(b) for failure to issue the patent within 3 years from the date of filing of the application. Accordingly, reconsideration of the patent term adjustment for U.S. patent number 6,961,641 is respectfully requested.

In addition, the Applicant feels that the term should be adjusted to include the entire 703 day adjustment, less any overlap under 37 C.F.R. § 1.703(f), as it is our understanding that it is Patent and Trademark Office policy to compute the 3-year delay under 37 C.F.R. § 1.703(b) only at the time the patent is granted.

However, should the office consider the Applicant's failure to file a request for reconsideration of the patent term adjustment prior to paying the issue fee an acquiescence of that portion of the deficient term adjustment known to the Applicant as of the mailing date of the notice of allowance, the total patent term adjustment under 37 C.F.R. § 1.703(f) is the period of adjustment under 37 C.F.R. § 1.703, to the extent that such periods are not overlapping, reduced by the reduction under 37 C.F.R. § 1.704 and further reduced by that portion of the adjustment under 37 C.F.R. § 1.703 known to the Applicant as of the mailing date of the notice of allowance. The total adjustment is thus 589 days pursuant to 1.703(a)(1) + 327 days pursuant to 1.703(a)(6) + 703 days pursuant to 1.703(b) – 327 days pursuant to 1.703(f) - 122 days pursuant to 1.704(b) – 228 days known to Applicant as of the mailing date of the notice of allowance = 942 days. It is respectfully submitted that in the patent term adjustment determined for U.S. Patent No. 6,961,641, the term was not adjusted to include the non-overlapping portion of the 703 day term adjustment under 37 C.F.R. § 1.703(b) for failure to issue the patent within 3 years from the date of filing of the application. Accordingly, reconsideration of the patent term adjustment for U.S. Patent No. 6,961,641 is respectfully requested.

Applicant respectfully requests reconsideration of the patent term adjustment for this patent. Office personnel are invited to contact the undersigned attorneys for the Applicant via telephone if such communication would expedite this request.

Respectfully submitted,



James L. Katz
Registration No. 42,711
Attorney for Applicant

Date: November 3, 2005
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CHICAGO, ILLINOIS 60610
(312) 321-4200

EXHIBIT A
U.S. Pat. No. 6,829,654

EXHIBIT B
PAIR – PATENT TERM ADJUSTMENT HISTORY



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PATENT APPLICATION INFORMATION RETRIEVAL


Patent Term Adjustment (PTA) for publication number: 09/723,564			
			Days
Filing or 371(c) Date:	11-28-2000	USPTO Delay (PTO):	916
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	122
Post-Issue Petitions (days):	+0	Total PTA:	794
USPTO Adjustment (days):	+0	Explanation of Calculations	

Search Options


Assignments
Continuity Data
Display References
Image File Wrapper
File History

Patent Term Adjustment History			
Date	Contents Description	PTO (days)	APPL (days)
10-12-2005	PTA 36 Months		
11-01-2005	Patent Issue Date Used in PTA Calculation	327	
10-06-2005	Receipt into Pubs	↑	
10-05-2005	Dispatch to FDC	↑	
10-05-2005	Application Is Considered Ready for Issue	↑	
08-09-2004	Issue Fee Payment Verified	↑	
09-22-2005	Receipt into Pubs		
09-19-2005	Mail Miscellaneous Communication to Applicant		
09-15-2005	Miscellaneous Communication to Applicant - No Action Count		
09-02-2004	Supplemental Papers - Oath or Declaration		120
08-29-2005	Pubs Case Remand to TC		↑
08-29-2005	Receipt into Pubs		↑
09-02-2004	Oath or Declaration Filed (Including Supplemental)		↑
03-23-2005	Receipt into Pubs		↑
03-02-2005	Receipt into Pubs		↑
09-02-2004	Rule 47 / 48 Correction of Inventorship Papers Filed		↑
11-04-2004	Receipt into Pubs		↑
11-01-2004	Correspondence Address Change		↑
10-24-2004	Correspondence Address Change		↑
10-15-2004	Receipt into Pubs		↑
09-02-2004	Workflow incoming petition IFW		

			↑
08-09-2004	Issue Fee Payment Received		↑
08-09-2004	Reverse Issue Fee		↑
08-09-2004	Issue Fee Payment Received		↑
07-26-2004	Workflow - File Sent to Contractor		↑
07-13-2004	Mail Notice of Allowance		↑
07-13-2004	Mail Examiner's Amendment		↑
07-12-2004	Issue Revision Completed		↑
07-12-2004	Notice of Allowance Data Verification Completed		↑
07-12-2004	Examiner's Amendment Communication		↑
07-07-2004	Date Forwarded to Examiner		↑
05-27-2004	Amendment after Final Rejection		↑
05-27-2004	Workflow incoming amendment IFW		↑
04-09-2004	Mail Final Rejection (PTOL - 326)		↑
04-07-2004	Final Rejection		↑
03-30-2004	Date Forwarded to Examiner		↑
03-26-2004	Response after Non-Final Action		2
12-29-2003	Information Disclosure Statement (IDS) Filed		↑
12-24-2003	Mail Non-Final Rejection		↑
12-18-2003	Non-Final Rejection		
07-28-2003	Information Disclosure Statement (IDS) Filed		
10-28-2003	Date Forwarded to Examiner		
10-14-2003	Response to Election / Restriction Filed		
10-07-2003	Case Docketed to Examiner in GAU		
09-09-2003	Mail Restriction Requirement	589	
09-08-2003	Requirement for Restriction / Election	↑	
07-10-2003	Case Docketed to Examiner in GAU	↑	
11-18-2002	Information Disclosure Statement (IDS) Filed	↑	
04-29-2002	Case Docketed to Examiner in GAU	↑	
01-30-2002	Case Docketed to Examiner in GAU	↑	
06-11-2001	Information Disclosure Statement (IDS) Filed	↑	
11-29-2001	Case Docketed to Examiner in GAU	↑	
06-21-2001	Transfer Inquiry	↑	
06-01-2001	Application Dispatched from OIPE	↑	
05-30-2001	Application Is Now Complete	↑	
05-30-2001	Correspondence Address Change	↑	
03-28-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	
03-27-2001	Correspondence Address Change	↑	
12-28-2000	IFW Scan & PACR Auto Security Review	↑	
11-28-2000	Initial Exam Team nn	↑	

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<p align="center">Years, Months, and Days</p> <p align="center">between December 9, 2004 and November 1, 2005</p> <p align="center">0 Years, 10 Months, and 23 Days</p>	

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From: November 28 2003 To: December 9 2004 <input type="button" value="CALCULATE!"/> <small>* Note that number of days calculated is between noon of the first date to noon of the second date *</small> Disclaimer	November 28, 2003 and December 9, 2004 377 Days = 9048 Hours = 542880 Minutes = 32572800 Seconds
Years, Months, and Days between <u>November 28, 2003</u> and <u>December 9, 2004</u> 1 Year, 0 Months, and 11 Days	

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